VANDERWAGEN-NAVAJO NATION LAND EXCHANGE

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1779

TO AUTHORIZE THE EXCHANGE OF CERTAIN LAND HELD IN TRUST BY THE UNITED STATES FOR THE NAVAJO TRIBE

NOVEMBER 23, 1981
WASHINGTON, D.C.

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NOVEMBER 23, 1981

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room 5302, Dirksen Senate Office Building, Senator William S. Cohen (chairman) presiding.

Staff present: Timothy Woodcock, staff director; Peter Taylor, general counsel; and Mary Jane Wrenn, staff attorney.

Senator COHEN. The hearing will come to order.

Good morning. Our hearing today concerns S. 1779 which was introduced by Senator Schmitt of New Mexico. The bill will authorize an exchange of land between the Navajo Nation and Bernard J. VanderWagen [1] or his daughter, Linda VanderWagen Ortega, or both of them.

The amount of land involved is not large: 548.05 acres of land now held in trust by the United States for the use and benefit of the Navajo Nation will be transferred to the VanderWagens in exchange for 640 acres of land which they own in fee.

There are a number of Navajo families now residing on the VanderWagen property and this exchange will permit these people to continue to reside there and at the same time assure the VanderWagens an equivalent property free of any encumbrance.

At this time, without objections, I will place a copy of S. 1779 in the hearing record.

The bill follows:

[1] Senator Harrison Schmitt's staff personally contacted the VanderWagens to verify the spelling of the name "VanderWagen."

97TH CONGRESS
1ST SESSION

S. 1779

To authorize the exchange of certain land held in trust by the United States for the Navajo Tribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 27 (legislative day, OCTOBER 14), 1981

Mr. SCHMITT introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To authorize the exchange of certain land held in trust by the United States for the Navajo Tribe, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subject to the approval of the Secretary of the Interior, the Navajo Tribe may exchange all of its interests in any land held in trust by the United States for the tribe in sections 4, 5, 8, and 9 of township 12 north, range 18 west, New Mexico principal meridian for the land located in section 14, township 13 north, range 18 west, New Mexico principal meridian which is owned by Bernard J. VanderWagen or

Linda VanderWagen Ortega or both of them. The land so acquired by the Navajo Tribe shall be held in trust by the United States for the tribe and shall have the same status as the land exchanged.

Senator COHEN. Senator Schmitt will present testimony in support of S. 1779.

Senator Schmitt, welcome.

STATEMENT OF HARRISON SCHMITT, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator SCHMITT. I want to express my appreciation to you and the committee for looking into these matters. They are simple matters. They can be handled quite easily. It is just unfortunate that we have to go through a legislative process to do something that really is quite equitable and quite reasonable.

Mr. Chairman and members of the committee, I am pleased to have this opportunity to appear before you to present information on the bill, S. 1779, and to answer any questions you might have concerning the intent of this legislation.

I might add that I am grateful for the committee's prompt scheduling of this hearing and for the attention that has been given this matter by both the members of the committee and the staff.

The purpose of this legislation is to allow an exchange of land between the Navajo Tribe and Mr. Bernard J. VanderWagen and his daughter. This property is located in McKinley County, north of Gallup, N. Mex.

Although Mr. VanderWagen and the Navajo families who are directly affected have mutually agreed that such an exchange would be beneficial to all parties, at present there is no general statutory or legal authority for the Navajo Tribe to conduct land exchanges.

As background, let me point out that for over a quarter of a century eight Navajo families have lived on land owned by Mr. VanderWagen. These families have built their homes and grazed their sheep on this land.

Throughout the period, there has been an understanding that this land in use by the Navajo families would be exchanged for an equal amount of tribal land which adjoins another portion of the VanderWagen ranch. In this case, the decision finally has been to exchange land of equivalent value and therein the difference in the acreage.

This oral agreement cannot be formalized without special legislation. All parties have agreed that formal acquisition of the properties will enable them to make certain improvements to the land without the uncertainties which currently exist.

Enactment of his legislation will result in the creation of two viable ranches. The Navajo families will receive approximately a section of excellent grazing land in a developing area. The VanderWagen family will acquire an equal amount of land between their existing ranch and a nearby highway.

The House Committee on Interior and Insular Affairs has favorably reported a companion bill, H.R. 4001. I would urge that similar action be taken by this committee to allow this noncontroversial measure to proceed quickly to final action by the Senate.

Mr. Chairman, I want to thank you for your attention. I would say that in one matter which has come up in discussions between us as to whether the land is reservation land or land held in trust, that

this is an issue that has not been fully clarified from the legal point of view.

It is my understanding that it makes no difference in terms of this exchange.

I will be happy to answer any questions you have concerning this matter.

Senator COHEN. Thank you very much.

I was happy to schedule this on short notice. As a matter of fact, there was a request that we even take it up during the continuing resolution.

In view of the fact that it is bound to be vetoed, I think wisdom has prevailed. But I see no real objection to this bill. I think it makes good sense. It is equitable, and I think the VanderWagens are to be commended because they do not want to dislocate those tribes who, over the years, have settled peacefully in that territory. I think it is an equitable solution.

Senator SCHMITT. The relations seem to be good. It is consistent, as a matter of fact, with other measures that I have sponsored and intend to sponsor. It begins to try to solidify the reservation boundaries to try to make sure that we have a contiguous boundary instead of a mess of small outliers in which the Indian population is living in New Mexico.

Senator COHEN. We want to thank you for your testimony.

Our next witness is Ted Koenig who is substituting for Ray Sampsel. Mr. Koenig is the Acting Director of the Office of Trust Responsibility, Department of the Interior.

Mr. Koenig?

STATEMENT OF TED KOENIG, ACTING DIRECTOR, OFFICE OF TRUST RESPONSIBILITY, U.S. DEPARTMENT OF THE INTERIOR

Mr. KOENIG. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am pleased to have the opportunity to present the views of the Department of the Interior on S. 1779, a bill to authorize the exchange of certain land held in trust by the United States for the Navajo Tribe, and for other purposes.

We have no objection to the enactment of this legislation.

This legislation is necessary to resolve a longstanding problem with land ownership between the Navajo Tribe and an individual landowner, Mr. Bernard J. VanderWagen.

The proposed legislation, if enacted, will exchange 548.05 acres of Navajo Tribal trust lands for 640 acres of land owned in fee by Bernard J. VanderWagen of Whitewater, N. Mex.

The Navajo tribal trust lands are part of the 69,947.24 acres acquired under Public Law 94–114, 89 Stat. 577; 25 U.S.C. 459A, which are located in the Whitewater area. The land so acquired by the Navajo Tribe shall be held in trust by the United States for the tribe and shall have the same status as the land exchanged now has.

Although this would not be an acre-for-acre land exchange, both the tribe and Mr. VanderWagen agree that the lands are of equal value. This is based on the location of these lands. The land that the

tribe would acquire in this exchange is located away from town, whereas the land that Mr. VanderWagen would acquire has highway frontage and is near the rural community of VanderWagen.

Since 1944 through formal and informal arrangements, several Navajo families have lived on land owned by Mr. VanderWagen. In exchange for such arrangements, he has used some equivalent land of the Navajos for grazing purposes.

These arrangements resulted from the Navajo's Reservation checkerboard pattern and the utility of the arrangements for the concerned parties.

Now, after some 37 years, Mr. VanderWagen wants to insure that his property is unencumbered but he does not want to force the unnecessary relocation of eight Navajo families currently living on his land.

Accordingly, both parties support the enactment of S. 1779 which would permit the families to remain on the land they have called home for years, while also enabling the VanderWagens to have, in return, an unencumbered equivalent parcel of land. It would also enable the VanderWagens to consolidate their landholdings.

This concludes my prepared statement. I would be happy to answer any questions you or members of the committee may have.

Senator COHEN. I have a couple of questions.

S. 1779 states that the land acquired by the Navajo Tribe in this exchange shall be held in trust by the United States for the tribe and shall have the same status as the land exchanged.

What is the status of the land exchanged?

Mr. KOENIG. The land exchanged is tribal trust lands, but are a part of the Navajo Reservation.

Senator COHEN. It is classified as reservation land?

Mr. KOENIG. Yes.

Senator COHEN. How far removed from the boundaries of the Navajo Reservation is the land that the tribes would acquire?

Mr. KOENIG. Twenty-five miles.

Senator COHEN. I think you indicated that the land to be acquired by the tribe lies within the so-called checkerboard ownership and that there is quite a bit of tribal trust lands in that area.

Are the tribal lands in this area reservation lands or trust lands, or both?

Mr. KOENIG. They are both. Primarily they are off-reservation lands.

Senator COHEN. Senator Schmitt touched upon this briefly, but a question has been raised as to the status of the land to be transferred to the VanderWagens.

Is this 548.05 acres tribal trust land or has it been allotted to individual Navajos?

Mr. KOENIG. It is tribal trust land and not allotted.

Senator COHEN. Has there been any title search done by BIA or the Department of the Interior?

Mr. KOENIG. On the land to be acquired?

Senator COHEN. Yes.

Mr. KOENIG. Well, I cannot answer that, Mr. Chairman. We will check it out.

[Subsequent to the hearing the following information was received for the record:]

It is my understanding that a title search of this land has been implemented and is expected to be completed by mid-January of 1982.

Senator COHEN. Thank you very much, Mr. Koenig. If we have any further questions, we will get in touch with you.

Thank you for a powerful statement.

That concludes this morning's hearing. The committee record will stand open for a period of 7 days in order to include any other materials for the record.

We stand adjourned.

[Whereupon, at 9:50 a.m., the hearing was adjourned.]

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